

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of February, two thousand sixteen.

PRESENT:

DENNIS JACOBS,
DEBRA ANN LIVINGSTON,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

ZAI YUAN WEN,
Petitioner,

v.

LORETTA E. LYNCH, UNITED STATES
ATTORNEY GENERAL,
Respondent.

13-426
NAC

FOR PETITIONER: Thomas V. Massucci, New York, NY.

FOR RESPONDENT: Stuart F. Delery, Assistant Attorney General; Anthony W. Norwood, Senior Litigation Counsel; Kathryn L. Deangelis, Trial Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 decision of the Board of Immigration Appeals ("BIA"), it is
3 hereby ORDERED, ADJUDGED, AND DECREED that the petition for
4 review is DENIED.

5 Zai Yuan Wen, a native and citizen of China, seeks
6 review of a January 22, 2013 decision of the BIA affirming
7 an Immigration Judge's ("IJ") September 1, 2011 denial of
8 asylum, withholding of removal, and relief under the
9 Convention Against Torture ("CAT"). *In re Zai Yuan Wen*, No.
10 A094 800 765 (B.I.A. Jan. 22, 2013), *aff'g* No. A094 800 765
11 (Immig. Ct. N.Y. City Sept. 1, 2011). We assume the
12 parties' familiarity with the underlying facts and
13 procedural history of this case.

14 Under the circumstances of this case, we have reviewed
15 both the IJ's and the BIA's opinions "for the sake of
16 completeness." *Zaman v. Mukasey*, 514 F.3d 233, 237 (2d Cir.
17 2008). The applicable standards of review are well
18 established. See 8 U.S.C. § 1252(b)(4)(B); *Xiu Xia Lin v.*
19 *Mukasey*, 534 F.3d 162, 165-66 (2d Cir. 2008) (per curiam).

20 For applications, like Wen's, governed by the REAL ID
21 Act, the agency may, "[c]onsidering the totality of the
22 circumstances," base a credibility finding on an asylum
23 applicant's demeanor, the plausibility of his account, and

1 inconsistencies in his statements and other record evidence
2 "without regard to whether" they go "to the heart of the
3 applicant's claim." 8 U.S.C. §§ 1158(b)(1)(B)(iii),
4 1231(b)(3)(C); *Xiu Xia Lin*, 534 F.3d at 163-64. Here,
5 substantial evidence supports the agency's decision.

6 In making the credibility determination, the IJ
7 reasonably relied in part on Wen's demeanor, noting that he
8 was unresponsive and vague when answering questions about
9 his membership in the Chinese Democracy and Justice Party
10 ("CDJP"). Particular deference is given to the trier of
11 fact's assessment of demeanor. *Majidi v. Gonzales*, 430 F.3d
12 77, 81 n.1 (2d Cir. 2005). And here, the hearing transcript
13 supports this finding, showing that Wen initially failed to
14 respond to questions, or gave conflicting answers about the
15 CDJP section to which he belonged. *Zhou Yun Zhang v. U.S.*
16 *INS*, 386 F.3d 66, 73-74 (2d Cir. 2004), *overruled on other*
17 *grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d
18 296 (2d Cir. 2007) (stating that we defer to an IJ's
19 demeanor finding when it is supported by facts in the
20 record); *cf. Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir.
21 2006) (holding that, although "doctrinal knowledge" of a
22 religion is not required in order to accept an asylum

1 applicant's testimony, lack of knowledge, combined with
2 other indicia that the applicant is not credible, can be
3 held against an applicant).

4 The demeanor finding is further supported by specific
5 inconsistencies identified by the IJ. *See Li Hua Lin v.*
6 *U.S. Dep't of Justice*, 453 F.3d 99, 109 (2d Cir. 2006).
7 Wen's testimony significantly differed from his asylum
8 application. Wen stated in his application that, as
9 punishment for assisting North Korean refugees, he was
10 sentenced to 15 days' detention, fined 5000 yen, and
11 threatened to one year of education through labor, but he
12 did not mention the fine or labor threat in his testimony.
13 Wen stated in his application that he was in a "brotherhood"
14 in China and contributed ten percent of his salary to assist
15 North Korean refugees, but testified that he did not belong
16 to any groups in China, and omitted any mention of financial
17 assistance. Wen claimed in his application that he worked
18 with North Korean refugees in 2006, but testified that he
19 had no knowledge of North Koreans working at his factory
20 after 2002.

21 Wen's testimony also conflicted with his passport,
22 which he provided at his initial hearing. That passport
23 contained immigration stamps from Malaysia dated May 2006.

1 However, Wen testified that he departed China in May 2006
2 with a valid Chinese passport, but used a Korean passport to
3 enter Malaysia.

4 Wen also gave inconsistent statements regarding his
5 detention for assisting the refugees. He offered varying
6 accounts regarding how he became involved with the refugees,
7 how many of them were housed together and escaped together,
8 and what year his detention ended. Wen first testified that
9 he was released in 2002, and then that he was released in
10 2006. When questioned about this inconsistency, he
11 corrected his statement, explaining that he "said it wrong,"
12 but the agency was not required to accept that explanation.
13 *See Majidi*, 430 F.3d at 80-81.

14 Having reasonably questioned Wen's credibility, the
15 agency did not err in relying on his failure to provide
16 corroborating evidence. *Biao Yang v. Gonzales*, 496 F.3d
17 268, 273 (2d Cir. 2007) (per curiam). Upon remand, the IJ
18 requested that Wen provide evidence that public security
19 officials visited his parents in July 2007 in an effort to
20 convince him to withdraw from the CDJP, and additional
21 evidence of his CDJP involvement. Wen failed to do so, and
22 had no explanation for this failure.

1 Given the demeanor finding, the lack of corroboration,
2 and the discrepancies in Wen's testimony, particularly those
3 regarding his detention and support for North Korean
4 refugees, substantial evidence supports the adverse
5 credibility determination. *See Xian Tuan Ye v. DHS*, 446
6 F.3d 289, 295-96 (2d Cir. 2006) (per curiam). Because
7 credibility is dispositive of withholding, we do not reach
8 Wen's arguments regarding future persecution or nexus. *See*
9 *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general
10 rule courts and agencies are not required to make findings
11 on issues the decision of which is unnecessary to the
12 results they reach.").

13 Wen did not preserve his challenge to the IJ's denial
14 of the CAT claim, and we decline to consider it.

15 For the foregoing reasons, the petition for review is
16 DENIED. The pending motion for a stay of removal is
17 DISMISSED as moot. Any pending request for oral argument in
18 this petition is DENIED in accordance with Federal Rule of
19 Appellate Procedure 34(a)(2), and Second Circuit Local Rule
20 34.1(b).

21 FOR THE COURT:
22 Catherine O'Hagan Wolfe, Clerk
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